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File No. O.L.P.E.P. 51.

Legal Department

A **BRANCH**

Subject:— Opinions under the Indian Press (Emergency Powers) Act, 1931

P. 150 (E)

File No. O.L.P.E.P./51

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361-A.

C O N T E N T S.

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Legal Department File No. C. I. P. E. P. /51.

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Legal Department File No. C. I. P. T. I. /51.

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Office of the R.L.A.

Statement of the Case.

An Urdu book entitled "Bahatrin Adab, 1948" was found to contain objectionable passages and it was referred to the Remembrancer of Legal Affairs for advice whether it would be actionable under section 4(1)(h) of the Indian Press (Emergency Powers) Act. The Remembrancer of Legal Affairs examined the objectionable passages and advised:

"The episodes narrated and described in the objectionable parts of the book mostly pertain to the happenings which followed the partition of India in August 1947. According to the writer, all Hindus and Sikhs are infidels while all Muslims are brave sons of Islam, none of whom would lay his hand upon a woman or a child. He bemoans the fact that although Delhi abounds in relics of Muslim rule, Muslims were subjected there to untold atrocities. He extols the acts committed by Muslims as acts of bravery by heroes and represents that the Kidnappings and abduction of Hindu and Sikh women as cases where the women concerned were infatuated by the bravery of the of the Muslim heroes. The writing would naturally inflame the feelings both of Muslims and Sikh readers against the members of the other community; and from that point of view would indirectly promote feelings of enmity or hatred between Muslims on the one hand and Sikhs and Hindus on the other. However, the provisions of section 4(1)(h) of the Indian Press (Emergency Powers) Act must be read with Article 19(2) of the Constitution; and it is doubtful whether the constitutional validity of the provisions of the Act imposing restrictions onmatter coming within the scope of section 4(1)(h)

would be sustained, unless the matter is such as would undermine the security of or tend to overthrow the State. The matter under discussion is not strong enough to come under that description; and for that reason, it would not be held actionable."

Government, however, desires to have confirmation of this opinion by the Advocate General, and, therefore, the matter is referred to him for confirmation and advice;

Sd/-

Remembrancer of Legal Affairs.

U.R.to the Advocate General, Bombay, No. 498-Confl.
dated the 5th July 1950.

N.V.D.
28/6
4c.

Advocate General's Chambers,
High Court,
Bombay, the 24th July 1950.

U.O.R. to the Advocate General of Bombay,
No. 498 (Confidential), dated 5th July 1950.

O p i n i o n

The passages complained of in the Urdu book "Bahathrin Adab, 1948, are higly objectionable, and clearly fall within the provisions of section 4(1)(h) of the Indian Press Emergency Powers Act. As pointed out by the R.L.A., the offending article must be read in the light of Article 19(2) of the Constitution. While I appreciate that that Article causes considerable difficulty, and will, if narrowly read, appear prima facie to invalidate most of the provisions of section 4, yet a definte attempt ought to be made to have the question decided once and for all. The acts referred to in the various sub-clauses of that section, except, perhaps, A and B, are all such as could, in a proper case, be construed to be such as undermine the security, for ortenddto overthrow the state. Each act may be per se remote to the actual over-throw or undermining, but a series of such acts may very well have that effect. It is absurd, to my mind, to say that Government can only inferfaar under the section when the security of the State has in fact been undermined. The mobject of the Press Emergency Powers Act is to control the press so as to prevent the commission of any of the acts, and to punish them when they occur. The governmental authority is the best qualified to appreciate the effect of a particular act, and I doubt that it was intended that if then was an apprehension of the repetition of particular acts which would culminate in under-mining the security of the State. Action could not be taken under the Statute; otherwise it would mean that an

offender must be allowed to continue, for instance, to seduce an officers or soldiers from their allegiance, until the number of persons so seduced assumes a large proportion of the Forces. The respect for Government, the administration of justice respect by one class of citizens for another, an essential to the maintenance of the security. It may be pointed out that the wording of Article 19(2) is capable of being so construed as to mean that an enactment must be in respect of the particular matters mentioned, and that it is left to the Legislature to determine that is proper in respect of such matters and further, that it is not for the courts to determine it.

There are observations of Their Lordships of the Supreme Court in one or two cases which are very wide and which can be used for the purpose of interpreting Article 19 in their narrow manner, but they were not made in connection with the act in question but with acts of the nature of the Public Security Measures Act. It is possible to distinguish them. The question is bound to come up sooner or later as a direct issue. An article of this nature ought to be taken notice of and proceedings taken so that the question at issue, if not earlier determined, may be brought to a head.

Sd/-

Advocate General

N.V.D.
28/6
4c.

Office of the P.L.A.

The Advocate General was consulted as desired. A copy of his opinion together with the statement of case prepared for him is appended.

sd/-

Remembrancer of Legal Affairs.

U.P. to H.D. (Poll)No. 720-Confl. dated the 27th September 1950.

N.V.D.
28/6
4c.

Office of the R.L.A.

A full Bench of the Patna High Court has held (Shearar J. dissenting) in Shrimati Shailabala Devi's ~~xxxxx~~ case that: Clauses (a) and (b) of sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931, are void since they are inconsistent with the provisions of Article 19 of the Constitution. On the other hand a little later a Full Bench of the Madras High Court (Panchapagesa Shastriar J. dissenting) has held that: Clauses (a)and (d) of sub-section (1) of section 4 of the Indian Press Emergency Powers) Act, 1931, are valid notwithstanding the provisions of Article 19 of the Constitution. The majority of the Madras High Court Judges held that these provisions are saved by Article 19(2) of the Constitution. The Judges had before them the Judgment of the Supreme Court in the cases against 'Cross-Roads' and 'Organizer'. It seems that if the ratio decidendi in the Judgment of the Supreme Court is applied to the present case, it is likely that the provisions of section 4(1) of the Indian Press (Emergency Powers) Act, 1931 may be declared void. The Supreme Court has held that: unless it is a law relating to a matter which undermines the security of or tends to overthrow the state it is not saved by clause (2) of article 19 of the Constitution.

2. There then remains the question of clause (h) of sub-section (1) of section 4 of the Indian Press (Emergency Powers)

1931. That clause contemplates cases which promote violence or enmity or hatred between different classes of the citizens of India. This clause is almost identical in terms with the wording of section 153A of the Indian Penal Code. It has been held by the Punjab High Court in Master Tarasing's case that both section 124A and section 153A of the Indian Penal Code are void being inconsistent with the provisions of Article 19 of the Constitution. In fact, section 153A was not pressed by the Attorney-General in Master Tarasing's case on the ground that that section (sec. 153A I.P. Code) was less likely to have survived than section 124A I.P. Code. These cases are now before the Supreme Court and the law on the point will be settled when that Court decides those cases.

3. Then there remains the question regarding clause (j) of sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931. That clause covers cases which directly or indirectly bring into hatred or contempt or excite disaffection towards the administration established in any State in India. If the principle enunciated by the Supreme Court in the case against "Cross-Roads" is applied, this clause is also not likely to survive as a valid provision of law. In view of the fact that the law on the point is still uncertain it may not be possible to take action in this case.

sd/-

Remembrancer of Legal Affairs.

U.P. to H.D. No. 230-Confl, dated the 2nd ~~February~~ March 1951.

N.V.D.

Officer of the P.I.A.

A full Bench of the Patna High Court has held (Shearar J. dissenting in Shrimati Shailabala Devi's case that: clauses (a) and (b) of sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931, are void since they are inconsistent with the provisions of Article 19 of the Constitution. On the other hand a little later a Full Bench of the Madras High Court (Panchapagesa Shastriar J. dissenting) has ~~xxxx~~ held that : Clauses (a) and (d) of sub-section (1), of section 4 of the Indian Press (Emergency Powers) Act, 1931, are valid notwithstanding the provisions of Article 19 of the Constitution. The majority of the Madras High Court Judges held that these provisions are saved by Article 19(2) of the Constitution. The Judges had before them the Judgement of the Supreme Court in the cases against 'Cross-Roads' and 'Organizer'. It seems that if the ratio decidendi in the judgment of the Supreme Court is applied to the present case, it is likely that the provisions of section 4(1) of the Indian Press (Emergency Powers) Act, 1931 may be declared void. The Supreme Court has held that: unless it is a law relating to a matter which undermines the security of or tends to overthrow the State it is not saved by clause (2) of article 19 of the Constitution.

2. There then remains the question of clause (h) of sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931. That clause contemplates cases which promote violence or enmity or hatred between different classes of the citizens of India. This clause is almost identical in terms with the wording of section 153A of the Indian Penal Code. It has been held by the Punjab High Court in Master Tarasingg's case that both section 124A and section 153A of the Indian Penal Code are void being inconsistent with the provisions of Article 19 of the Constitution. In fact, section 153A

was not pressed by the Attorney-General in Master Tarasing's case on the ground that that section (Section 153A I.P. Code) was less likely to have survived than section 124A Indian Penal Code. These cases are now before the Supreme Court and the law on the point will be settled when that cout decides these cases.

Under the circumstances it may not be possible to take any action in this case as the law on the point is uncertain.

sd/-

Remembrancer of Legal Affairs.

U.R. to H.D. No. 3865, dated the 8th March 1951.

N.V. D.
28/6
4c.

Office of the P.L.A.

The question raised under section 19 of the Indian Press (Emergency Powers) Act, 1931, is whether the republicaim of a notification issued by a State Government other than the State of Bombay declaring a particular book forfeited to Government amounts to the prescription of such book in the State of Bombay also. The Home Department is inclined to hold that the effect of a republication by this Government of a notification issued by any other State Government is that even our police officer can seize a book proscribed by any other State Government and that the republication of such notification amounts to the proscription of the book in the State of Bombay also.

2. The Government of India in the Home Department, in their letter No. 37/7/40-Political, dated the 26th February 1940, addressed to the Chief Secretary to the Government of Bihar (presumably a copy of which appears also to have been addressed to this Government) has held that orders of proscription issued by a Provincial Government under section 99A of the Code of Criminal Procedure, section 19 of the Indian Press (Emergency Powers) Act, 1931 or under the Defence of India Rules, 1939 are legally valid throughout British India. The Government of India further hold that the words "wherever found" which occur in the provisions of law in question are sufficient to make these provisions operative throughout the area to which the Acts and Rules extend. The notification issued by any State Government under section 19 of the Act forfeiting a copy of th book specified in the notification is therefore legally valid throughout India, as held by the Government of India and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or

any such book or other document may be or may be reasonably suspected to be. It appears that the Bombay Government usually republishes the notification issued by any other State Government under section 19 of the Act under a preamble that the notification is "republished for general information". This republication does not do anything more than bring to the notice of public and especially the police that a particular book has been proscribed elsewhere so that the police can take necessary action under the said section 19. Such republication has not the effect of proscribing the said book in the State of Bombay as is assumed by the Home Department. Provisions of section 23 of the Act lend support to his view. It is provided in that section that any person having an interest in any book in respect of which an order under section 19 has been made may, within two months from the date of such order apply to the High Court for the local area in which such order was made, to set aside such order. It is obvious that the High Court for the local area will be the High Court of the State by which an order under section 19 has been made and not the High Court of the State of Bombay in which such notification has been merely republished for general information of the public. The period of two months also specified in that section is to run from the date of the order made by any State Government and not from the date of the republication of the order. The Remembrancer of Legal Affairs is therefore of opinion that the Government may act upon the above view until it is judicially tested and disapproved.

Sd/-

Remembrancer of Legal Affairs.

U.D. to H.I. (Poll)., No. 14351, dated the 12th October 1950.

N.V.D.
28/6
4c.

Office of the P.I.A.

Statement of the Case.

The Government of Patiala and East Punjab States Union, in exercise ofthe powers conferred by section 20 of the Patiala and East Punjab States Union Press (Emergency Powers) Ordinance, 2006, declared to be forfeited to the Government all copies, wherever found, of the book in English "Now it can be told" written by Shri A.N. Bali published by Akashvani Prakashan Ltd., Gopalnagar, Jullundur City (Punjab) and printed at the Bharat Mudranalaya, Delhi Gate, Delhi, and all other documents containing copies or translations of or extracts from the aforesaid book, inasmuch as it contained matter of the nature described in clause (c) of sub-section (5) of the said Ordinance. On receipt of the copy of the said notification from the said Government, the Bombay Government merely republished the said notification for general information (copy at page 15 ante) and the question of proscribing the said book in the State of Bombay is under consideration of Government separately. Section 19 of the Indian Press (Emergency Powers) Act, 1931, as adapted provides as follows:-

> "19. Where any newspaper, book or other document wherever made appears to the State Government to contain any words, signs or visible representations of the nature described in section 4, sub-section (1), the State Government may, by notification in the Official Gazette, stating the grounds of its opinio , declare every copy of the issue f the newspaper and every copy of such book or other document to be forfeited to Government and thereupon any police officer may seize the same wherever found in all the States of India and any Magistrate may by warrant authorise any police officer not below the rank of Sub-Inspector to enter upon and search for the same....

in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be."

The question raised generally under section 19 of the Indian Press (Emergency Powers) Act, 1931, is whether the republication of a notification issued by a State Government other than the State of Bombay declaring a particular book forfeited to Government amounts to the proscription of such book in the State of Bombay also. The Home Department is inclined to hold that the effect of a republication by this Government of a notification issued by any other State Government under the said Act is that even our Police officer can seize a book proscribed by any other State Government and that the republication of such notification amounts to the proscription of the book in the State of Bombay also.

The Government of India in the Home Department, in their letter No. 37/7/40-Political, dated the 26th February, 1940, addressed to the Chief Secretary to the Government of Bihar (copy enclosed) has held that orders of proscription issued by a Provincial Government under section 99A of the Code of Criminal Procedure, section 19 of the Indian Press (Emergency Powers) Act, 1931 or under rule 40(2) of the Defence of India Rules, 1939 are legally valid throughout British India. The Government of India further held that the words as "wherever found" which occur in the provisions of law in question are sufficient to make these provisions operative throughout the area to which the Acts and Rules extend. The notification issued by any State Government under section 19 of the Act....

forfeiting ofcopy of the book specified in the notification is threfore legally valid throughout India, as held by the Government of India and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub-Inspector to enter upon and search for the same in any premises where any copy of such issue of any such book or other document may be or may be reasonably suspected to be. It appears that the Bombay Government usually republishes the notification issued by any other State Government under section 19 of the Act under a preamble that the notification is "republished for general information". This re-publication does not do anything more than bring to the notice of public and especially the police that a particular book has been proscribed elsewhere so that the police can take necessary action under the said section 19. Such republication has not the effect of proscribing the said book in the State of Bombay as is assumed by the Home Department. Provisions of Section23 of the Act lend support to this view. It is provided in that section th at any person having an interest in any book in respect of which an order under section 19 has been made may, within two months from the date of such order apply to the High Court for the local area in which such order was made, to set aside such order. It is obvious that the High Court for the local area will be the High Court of the State by which an order under section 19 has been made and not the High Court of the State of Bombay in which such notification

has been merely republished for general information of the public. The period of two months also specified in that section is to run from the date of the order made by any State Government and not from thedate of the republication of the order. The Remembrancer of Legal Affairs is therefore of opinion that the Government may act upon the above view until it is judicially tested and disapproved.

The Government of Bombay is inclined to agree with the view of the Government of India expressed in their letter in the Home Department No. 37/7/40, Political, dated the 26th February 1940 and to hold that the notification issued by any other State in India proscribing any book under section 19 of the Act has the effect of proscribing it in the State of Bombay along with the whole of India. As there is conflict of views the Government of Bombay wishes that the Advocate General should kindly oblige Government by his opinion on the point. Incidentally it may be observed that the subject "Newspapers, books and printing presses" now falls under item 39 in List III in the Constitution of India.

Sd/-

Remembrancer of Legal Affairs.

U.P. to the Advocate General No. 16642

dated the 27th November 1950.

N.V.D.
28/6
4c.

No 8 of 1951

Advocate General's Chambers,
High Court,
Bombay, the 27th April 1951.

U.O.P. to the Advocate General of Bombay,
No. 16642, dated the 28th November 1950.

Opinion

The Government of Patiala and the East Punjab States Union in exercise of th powers conferred by sec. 20 of the Pepsu Emergency Powers Ordinance, declared to be forfeited to Government all copies wherever found of a certain book, and all other documents mentioned in the Notification. The B'bay Government republished the Notification for general information. By virtue of section 19 of the Press Emergency Powers Act, 1931, any police officer may seiz documents proscribed by any State Government whereverfou

In my opinion, by reason of that section and the republication by the State Government, it is unnecessary for each State in turn to make a substrantiv order for forfeiture. The Notification, by virtue of sec. 19 of the Press Emergency Powers Act is valid thro-ghout India. I agree that the republication of the Notification has not the effect of an independent substantive order; & at the same time there is nothing to prevent the Government of the State of Bombay acting upon the Order of the other State. The Notification has the effect of proscribly book in the whole of India.

Sd/-

Advocate General.

N.V.D.
28/6
4c.

Office of the P.L.A.

With reference to the Secretary Home Department's note dated 25.10.1950, a copy of the Advocate General's opinion No.8 dated 27th April 1951 together with a copy of the P.L.A.'s statement of the share No.16642 dated 27th November 1950 is forwarded herewith.

sd/-

Remembrancer of Legal Affairs.

U:R. to H.D.(Poll)No. 7682 dated the 15th May 1951.

N.V.D.
28/6
4c.

Office of the P.L.A

In the weekly "Vivek" in its issue of 10th June 1951 an article appeared under the heading "Rape on a minor girl. Her mutilated corpse in a pool of blood". In reality what the writer of the article was describing by this graphic description was the amendment of the Constitution of the Republic of India. The Constitution was compared to a minor girl as it was born only in January 1950. The amendment was described as rape on here. The persons who were responsible for the Constitution and the amendment were stated to be the Prime Minister Shri Jawaharlal Nehru and the Law Minister Shri Ambedkar who are described as the father and the mother if the girl. Therefore, the rape (the amendment) is said to be made by the father with the consent of the mother and other brothers (the Legislators).

2. The Home Department requests P.L.A. to advise whether the Editor can be prosecuted under section 4(1)(j) of the Indian Press (Emergency Powers) Act, 1931 (Act No. XXIII of 1931). The article though making use of a simile which may be in bad taste cannot be said to bring into hatred or contempt or to excite disaffection towards the Administration established in any State in India and therefore, does not come within the terms of clause (j). The article having been published on 10th June 1951, when the proposed amendment of the Constitution was still to receive the assent of the President, would be covered by Explanation 2 to section 4 of the Act.

s d/-

Remembrancer of Legal Affairs.

U.P. to H.D. No. 10857, dated the 10th July 1951.

N.V.D.
28/6
4c.

Office of the R.L.A.

Section 15 of the Indian Press (Emergency Powers) Act, 1931, empowers a Magistrate by order in writing and subject to such conditions as he may think fit to impose to authorise any person by name to publish a news-sheet or to publish news-sheets from time to time. Under this section the publication of news-sheets would be subject to such conditions as the Magistrate may think fit to impose. This provision constitutes a previous restraint on publication. The question is whether unconstitutional in view of article 19(1)(a) of the Constitution. A similar point has been considered by the Madras High Court in the case of Srinivas Bhat v. The State of Madras (1951 M.L.J. 115). On page 129 of the report Panchapagesa Sastri J. has observed that the Constitution of India does not draw a line between pre-publication and post publication as such. According to him the exceptions provided in article 19(2) relate to matters with reference to which the Legislature may enact laws applicable to the stage before publication as well as after publication and even in normal and peace time such legislation is not precluded by the Constitution as unconstitutional. In that case Sastri J. refers to the case of Brij Bhushan v. The State of Delhi (1950 S.C.J. 425) in which the Act which is impugned permitted a pre-cencorship order. In that case the Supreme Court held that the imposition of pre-censorship on a journal was undoubtedly a restriction on the liberty of the Press and then postulated the question as follows: "The only question, therefore, is whether sec. 7(1)(c) of the East Punjab Public Safety Act, 1949, which authorises the imposition of such a restriction falls within the reservation of clause (2) of article 19". From that question Sastri J. deduces the proposition that the fact of pre-cencorship by itself is not conclusive

of the matter. Relying on that case Sastri J. comes to the conclusion that the Press Act is neither wholly or in part unconstitutional on the mere ground that it operates to create restraints previous to publication; Section 15 of the Press (Emergency Powers) Act is not accordingly invalid on the mere ground that it imposes a restraint previous to publication. The question however is whether it falls within the reservation of clause (2) of article 19. The Constitution of India has been amended by the Constitution (First Amendment) Act, 1951, and in view of new clause (2), a press law imposing reasonable restrictions on the exercise of the right conferred by sub-clause (a) of clause (1) of article 19 in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence would be upheld as perfectly constitutional. Section 15 of the Indian Press (Emergency Powers) Act, however, gives unrestricted power to the Magistrate to impose conditions and goes wider than the permissible limits of clause (2) of article 19. That section does not restrict the mere power of the Magistrate to impose conditions in the interests of the security of the State, friendly relations with foreign States, public order, etc. The section may, therefore, be held as falling outside the ambit of article 19(2) and therefore unconstitutional.

Sd/-

Remembrancer of Legal Affairs.

W.P. to H.D. (Poll.), No. 11423, dated the 19th July 1951.

N.V.D.
28/6
4c.

OFFICE OF THE R.L.A.

The article no doubt is a strong criticism of the Nehru Government that in the name of secularism Hindus are repressed and Muslims pampered; that unity between Hindus and Muslims is not possible - unless the extreme Muslim demands are satisfied, amounting to changing Hindustan into Islamistan and that atrocities committed on Hindus in Pakistan are insulting to our nation and that time has come not to be ashamed of calling oneself a Hindu etc. It expresses in strong terms a point of view which an extremist political section in this country maintains. It may have a tendency to create or result in ill feeling between Hindus and Muslims, but there is no direct incitment of hatred between Hindus and Muslims. As such it may be difficult to bring it within the mischief of section 4(1)(h) of the Press (Emergency Powers) Act, 1931.

Sd/-

Remembrancer of Legal Affairs.

U.P. to H.D. (Poll.) No. 12139, dated the 30th July 1951.

N.V.D.
28/6
4.c.

Office of the R.L.A.

The first point for consideration is whether the publication of the book "Pahila Bali" comes within the bar of clauses (a) and (b) of section 4(1) of th Press (Emergency Powers) Act, (Act XXIII of 1951.).

2. The book publishes a three-act play written by Amar Shaikh. It deals with the story of an agriculturist widow. Her son is in jail, apparently for political activities. She tills her land and maintains herself. The village patil who appears to be a busy-body and who is shown as flirting with capitalists and zamindars pursuades he to lease out her land to a sugar factory. She refuses and then khis harassments of her begin. ~~[illegible]~~ Her helper in agriculture is jailed. Her land is acquired apparently under the Land Acquisition Act, for the purposes of the factory but she refuses to recognise the acquisition and tills the land and takes the produce. She is, therefore, charged with xx theft. The patil comes with his henchmen to take away the 'stolen' corn. The woman and her sympathesers having got wind of it are ready to oppose. The Patil and his henchmen enter the house. A fight ensues in which the woman is injured and later dies. While the fight is on a police party arrives and there is some firing by the police.

3. There are passages in the book directed against and meant to expose the machinations of capitalists and zamindars. There are passages criticising the Congress and socialist parties and recommending the Red Flag party . There are passages meant to show that several of our present day difficulties are due to the present Government.

And there are, at the end of the book, passages in dialogue where the peasants are exhorted by certain leaders to meet violence for protection of their person and property.

4. For this publication to come within the bar of clause: (a) and (b) of section 4 (1) of the Press (Emergency Powers) Act, 1931, there should be an incitement or encouragement for committing a cognizable offence involving violence or an approval or admiration of any such offence committed by another. The book does not commit this mischief. When the passage wherein violence is either advocated or hinted at are read in their context and in the context of the story as a whole, it will appear that what is advocated is that violence should be met with violence for the defence of person and property. Therefore an action under clause (a) and clause (b) of section 4 of the Press (Emergency Powers) Act, 1931, will not succeed.

The second point for consideration is whether it will fall under clause (d) and (h) of section 4(1) of the Press (Emergency Powers) Act. It will not come under the bar of clause (d) of section 4(1) of the Press (Emergency Powers) Act. For that clause to apply so far as is relevant to the present case, the book should tend, directly or indirectly to bring into hatred or contempt any class or section of His Majesty's subjects in British India. The book is a political propaganda in favour of a particular politico-economic concept. What it is directed against is capitalism and the several manifestations in law and daily life of what is known as the capitalists themselves or as individuals. But even if the capitalists themselves can be said to be aimed at, the capitalists do not form a 'class'. The word 'class' denotes that the group indicated is well defined and readily ascertainable and has and element of permanency or stability and is numerous.

The designation 'capitalists' is an economic concept and is therefore also a relative and fluid concept. In fact the word 'capital' itself according to economic theory is 'saved' or 'stored' labour. Therefore there is no inherent severance, much less antagonism, between labour and capital. Capitalists therefore cannot be called a class for purposes of criminal law. (See Emp. vs. Maniben Kara 34 Bom. L.R. 1641; Vishambhar Dayal vs. Emp. 42 Cr. L.J. 40 and Lay Maung vs. the King 1939 Rang 239). In view of this fact it is unnecessary to decide whether section 4(1) (d) and (h) are valid under Article 19(2) of the Constitution as amended by the Constitution (First Amendment) Act.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D. No. 12129 , dated the 30th July 1951.

N.V.D.
28/6
4c.

OFFICE OF THE P.L.A.

The question for consideration is whether sub-section (1) of section 7 of the Indian Press (Emergency Powers) Act, 1931, is rendered void by reason of article 19 of the Constitution.

2. Section 7(1) of the Indian Press (Emergency Powers) Act, 1931, empowers a magistrate to require any publisher of a newspaper, who is required to make a declaration under section 5 of the Press and Registration of Books Act, 1867, to deposit with him within ten days from the date on which declaration is made, a security to such an amout, not being more than one thousand rupees, as the magistrate may in each case think fit to require. Under section 8 of the Act, if any newspaper in respect of which any security has been ordered to be deposited under section 7(1), contains any words, signs or visible representations which, in the opinion of the State Government are of the nature described in section 4, sub-section (1), the State Government may, by notice in writing to the publisher of such newspaper stating or describing such words, signs or visible representations, declare such security or any portion thereof to be forfeited to Government. It will be seen from these provisions that the object of the deposit of security is to ensure against the abuse of the privilege of publishing a newspaper. The provisions do not contain any restraint on the freedom

speech and expression guaranteed by article 19.
Sub (2) of article 19 of the Constitution
the laws which impose restraint on the freedom
speech and expression to the extent specified
that clause; but in this case there
no question of the imposition of any
straint on the freedom of speech and
pression, and therefore it is not necessary
consider whether section 7(1) of the Act is
ved by the provisions of clause (2) of article 19.
stated before, section 7(1) of the Act
quires the publisher to deposit certain
curity against abuse of the privilege of
blishing a newspaper; and that requirement
oes not impose any restraint on the freedom
f speech and expression, for, a publisher is
ree to publish his opinions unrestricted by any
recensorship, for example, like the one considered
y the Supreme Court in the case of Ramesh Thapar
s. the State of Madras. Section 7(1) of the
ct doesnot prohibit the publisher from propagating
is ideas. He is free to propogate them but
If he he abuses the privilege granted to him
the security deposited by him is forfeited.
It would be pertinent to refer here to the foot-
ote in Coolies Constitutional Limitations
ol. VI, page 884, which says that the guarantee
f freedom of speech is not encroached upon
y affording appropriate remedies for the abuse
f the privilege. This being the position, it
oes not appear that section 7(1) of the Indian
ress (Emergency Powers) Act violetes the
reedom of speech and expression guaranteed
by article 19 of the Constitution. It is no
oubt true that the Madras and Patna
igh Courts have held that section 4(1)

of the Indian Press (Emergency Powers) Act, is ultra vires. But in Ramesh Lal Saha v. the State of West Bengal, 55 C.W.N. 159, the Calcutta High Court has held that section 7(1) of the Indian Press (Emergency Powers) Act, is an existing law relating to the matter which undermines the security of the State or tends to overthrow the State and accordingly falls within clause (2) of article 19 of the Constitution and is, therefore, not ultra vires of the Constitution. The practice of demanding security under section 7(1) of the Act may not be stopped until the Courts hold that the section is rendered void by reason of article 19 of the Consitution.

Sd/-

Remembrancer of Legal Affairs.

U.P. to H.D. No. 8203, dated the 24th May 1951.

N.V.D.
28/6
4c.

Legal Department.

Indian Penal Code. 1860. Section 153A.

Indian Press (Emergency Press) Act, 1931. Section 4(1)(h) Article in 'Struggle'.

The question for consideration of the P.L.A. is whether the article appearing in the issue of the Struggle dated the 21st July 1951 is actionable. The article states that Muslims in this country are showing an anti-Jewish mentality and criticizes this attitute in intemperate language. It is stated: "The traditional rascality of the Muslims in general and the Indian Muslims in particular, born out of the terrible communal frenzy, and mad religious fervour have been the root cause of great many distructions in the world." Further on it says:

> "An illustration to justify the rascality and degradation of the Muslims is the appearance of anti-Jewish posters in Bombay in the beginning of June 1951."

The article further alleges that anti-Jewish propaganda is being carried by thousands of persons who receive money from Muslims and that the Muslims in general boycott Jewish shops. The article in the end calls upon Government to investigate into the matter and to inflict punishment on the offenders in order to that lives of Jews in India are not jeopardised.

2. It is not known whether the allegations in the article viz. that anti-Jewish posters were exhibited and that anti-Jewish propaganda is being carried on in and the city of Bombay are correct. If there is any basis for these allegations, the article which is writtenx with the professed object of preventing and checking such activities which are likely to promote feeling of enmity between the Jews and the Muslims of India to be saved by the explanation to section 153A, I.P.C. and explanation 4 clause (h) of section 4(1) of the Indian Press (Emergency Powers)

Act, 1931, notwithstanding the fact that it uses abusive language. The validity of these sections is also not free from doubt. In two decisions of the Punjab High Court given before the recent amendment to the Constitution these provisions of law were held void. In Amar Nath Bali vs. State, 52 Cr. L.J. 261, the Punjab High Court has held that section 4(1)(h) is capable of covering publications which do not undermine the security of or tend to overthrow the State and that being so, the possibility of application of section 4(1)(h) for purposes not sanctioned by the Constitution is not ruled out and therefore that section is void and unconstitutional. Section 153A of the I.P.C. has also been held to be void by the same High Court in Master Tara Singh's case. But leaving aside the question of validity of these sections, the article, though couched in intemperate and offensive language, does not appear to be actionable either under the I.P.C. or the Indian Press (Emergency Powers) Act.

Sd/-

Additional Secretary to Government.

U.P. to H.D. No. 13948, dated the

30th August 1951.

N.V.D.
28/6
4c.

Legal Department.

The Madras High Court has no doubt held in "Mrs. Pattamal Arumugam vs. C.P.M. Egmore" (1951 II M.L.J. 101) that section 3(1) of the Press (Emergency Powers) Act, 1931, is void as being opposed to the freedom guaranteed under clauses (a) and (g) of article 19(1) of the Constitution and being not saved by article 19(2) but a contrary view has been taken by the Calcutta High Court in "Lal Saha v. The State of West Bengal" (55 C.W.N. 139) and therefore till the point is settled by a ruling of the Supreme Court or till the question comes up before the Bombay High Court it would not be incorrect to act on the assumption of the validity of the existing law.

Sd/-

Additional Secretary to Government.

U.P. to H.D.(Poll.), No. 13090, dated the 14th August 1951.

N.V.D.
29/6
4c.

OFFICE OF THE E.L.A.

The article read as a whole no doubt tends to promote the feelings of hatred and enmity between Hindus and Muslims and would have been actionable under section 4(1)(h) of the Indian Press (Emergency Powers) Act, 1931. But the provision as it stood would be held to be void as being incosistent with the Constitution. The Indian Press (Emergency Powers) Act, 1931 is now repealed by the Press (Objectionable Matter) Act, 1951. But the said Act has not yet been brought into force and it would not have retrospective operation.

Sd/-

Remembrancer of Legal Affairs.

U.P. to H.E. (Poll.) No. 17770, dated the 9th November 1951.

N.V.D.
29/6
4c.

OFFICE OF THE R.L.A.

The article gives instances of the series of accidents which have occured in the various ships of the Indian Navy and having regard to the nature of these accidents, the circumstances in which they took place and the manner in which they are repeated, the writer comes to the conclusion that -

1. these were attempt at sabotage,
2. the Senior British Officers who are responsible for administration and inquiry have not given proper thought to these accidents have treated them as of no importance and thereby they have not carried out their responsibilities properly.
3. The Indian Officers in the service have not as yet developed a high sense of duty and have not as yet put "our country" first before them.

The article exhorts the naval authorities to take a more serious view of these things and exhorts the Indian Officers to place their country first.

The article read as a whole cannot be said to affect the training, discipline or administration of the Indian Navy and is not actionable under section 4(1)(f) of the Indian Press (Emergency Powers) act, 1931.

Sd/-

Remembrancer of Legal Affairs.

U.P. to H.D. (Poll.) No. 19379, dated

Office of the P.I.A.

It is stated in H.D. note at p. 18 ante that if section 4(1)(h) of the Indian Press (Emergency Powers) Act, 1931, is ultra vires of the Constitution, how the Parliament can enact sect. 3(v) of the Indian Press (Objectionable Matter) Act, 1951. In other words the contention seems to be that the two provisions are similar and if the latter is valid, the former cannot be held to be invalid. This contention is entirely wrong. It is true that article 19(2) of the Constitution, as amended by the Constitution (First Amendment) Act, provides that reasonable restrictions can be imposed on the freedom of speech and expression in the interest of public order. That clause is no longer limited to restrictions in the interest of the security of the State or to prevent the overthrow of the State. It is also clear that speeches or any publication which promotes feelings of enmity or hatred between different sections of the people of India can properly be held as affecting the maintenance of public order (see Ram Singh v. State of Delhi (1951) S.C.R. 451). But all the same clause (2) of article 19 provides that such restrictions must be reasonable. Section 4(1)(h) of the Indian Press (Emergency Powers) Act, 1931, provided that any publication which tends directly or indirectly to promote such feelings would come under the section. This provisions was very wide and would be construed by the courts as imposing unreasonable restriction on the freedom of speech and expression. The wording of sect. 3(v) of the Indian Press (Objectionable Matter) Act, 1951, is entirely different.

It must be made out that there is likelihood of

any feelings of enmity and hatred being created between the two sections by means of any publication. The provisions of the new enactment can, therefore, be supported as warranting reasonable restriction on the freedom of speech and expression.

Sd/-

Remembrancer of Legal Affairs.

U/R. to H.D. No. 19958 dated the 13th December 1951.

4c.

Office of the P.L.A.

The question referred by the Home Department to the P.L.A. is whether the article appearing under the heading "Fruitless Jumble (of Words)" in the Marathi Weekly "MAHRATTA" issue of 29th September 1951, is actionable under clause (a) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931, which corresponds broadly with clause (ii) of section 3 of the Indian Press (Objectionable Matter) Act, 1951.

2. The article refers to the wordy clash which took place between the Speaker of the Bombay Legislative Assembly and the Member Shri Datta Deshmukh in respect of the use of the word "rebellion" by the latter in the course of his speech and states that having regard to the desire of the house that Shri Deshmukh should apologize, he was not able to explain the idea underlying the use of that word, and then the article proceeds to explain those ideas. The writer refers to the historic trial of Captain Shaha Navaz, Captain Saigal, and Lieut. Dhillan of the Indian National Army whose defence was arranged by the Indian National Congress and conducted by some of the ablest national leaders of the time. The writer points out that Shri Bhulabhai Desai who conducted the defence based his argument on that part of International Law under which even civil war is justified in certain circumstances, and the writer then proceeds to quote from the introduction written by Dr. Kilas Nath Katju a member of the Defence Committee and now the Governor of West Bengal, to a pamphlet concerning the trial of these Indian National Army Officers. In that quotation Dr. Katju, the writer continues, has stated that International Law recognizes that a civil war is legal and justified even though a national

Government is in power. The writer also refers to the statement of Pandit Nehru in his preface to the book "Two Historical Trials at the Red Fort" wherein Pandit Nehru stated that even the law hallowed by convention and example had to recognize the right of the people to struggle for their own freedom. Having given these quotations and illustrations the writer states that the people and with the consent of the people the democratic parties who fight for the people have a right to take up arms against the exploiters of the people when the object is to establish a peoples' democracy, in conformity with the working class ideology. This, in effect, the writer points out, is the ideology of the Marxist-Leninist Party and of the Peasant's and Workers' Party led by Shri Deshmukh who believes that the people are the real source of all power and that a sovereign people can exercise power by being armed. The writer then proceeds to explain the circumstances under which a rebellion takes place. He says that the party organizations today being not in close touch with the people, if a party comes into power on the strength of the vote of the electorate it doesnot necessarilly follow that there is no discord between the hopes and aspirations of the people and the practices of that party which, in the present case, is stated to be the Congress. The result, according to the writer, is that the weapons which the people innocently created for their protection are used against them and in that case they have the right to snatch those weapons away and to use them in accordance with their own wishes. The writer states that it does not amount to rebellion to ask the people to do this after it has become inevitable. But even if a rebellion, which is nothing but a momentary explosion of the discontent among the people or a section of it, takes place under these circumstances, then, it is the sacred right of the democratic parties to appeal

to the masses to give protection to those who participated in such rebellion. The writer then proceeds to give instances wherein the Congress Party had supported those who rebelled against established authority. The instances given are those of Garhwal Regiment in Peshawar and the revolt of the Naval ratings. The writer then proceeds to points out that the Congress has even supported those who had taken part in terrorist activities against the established authority, and the instances given are, the "Meerut Conspiracy Case" and the case of "Bhagat Sing, Sukhdev and Rajguru". The writer points out that Shri Deshmukh's contention was that the ethics of these otherwise terrorist activities depended upon how far these acts are sympathetic towards the hopes and aspirations of the people. At the same time Shri Deshmukh made it clear that his party, i.e. the Peasants' and Workers' Party did not support or resort to such methods. The writer then concludes that the ethics of an up-rising or a revolt by a group of or an individual will have to be judged from the circumstances giving rise to that uprising or revolt, and if the same has been occassioned by the repression and exploitation by the enemies of the people the same should be judged in the light of the inspiration behind it; and there is nothing wrong if the people are told by a particular party that in those circumstances those acts would be consid sacred although the party itself may not, as the Peasa & Workers' Party does not, subscribe to or advocate resort to such means.

It will be seen that the object of the writer is to explain the legal and ethical basis of a rebelli or an uprising, and to point out under what circumstar such a course is justified. The article read as a whol cannot be said to all under clause (a) or any of the

of the other clauses of sub-section(1) of section 4 of the Indian Arms (Emergency Powers) Act, 1934.

Sd/-

Secretary to the Government of India,
Ministry of Legal Affairs.

U.O. to H.D. No. 20254, dated the 19th December 1951.

N.V.D.
29/6
4c.

Office of the P.I.A.

The question for consideration in this case is whether the order issued under section 19 of the Indian Press (Emergency Powers) Act, 1931, declaring the copies of the booklet "Tatyarao Savarkar Yancha Pavada", forfeited to Government on the ground that it contained words of the nature described in section 4(1)(b) of the said Act, has become void on account of article 19 of the Constitution. The order was passed in 1939 and was valid under section 19 of the Indian Press (Emergency Powers) Act, 1931. Although certain provisions of the said Act became void under article 13 of the Consitution when it came into force, the Supreme Court has held that the provisions of the said article do not make an existing law which is inconsistent with the fundamental rights void ab initio, but only renders such laws ineffectual and void with respect to the exercise of fundamental rights on and after the date of the commencement of the Constitution. It has no retrospective effect, and if, therefore, an act was done before the commencement of the New Constitution in contravention of the provisions of any law which was a valid law at the time of the commission of the act, even a prosecution which was commenced before the commencement of the Constitution is not in any way affected (see Keshavan Menon vs. State of Bombay (1951) S.C.R. 228).

Much more, therefore, an order passed in 1939 under section 19 of the Indian Press (Emergency Powers) Act, 1931, when it was a valid provision will not be affected. Any forfeitures ~~and~~ made before the commencement of the Constitution in pursuance of the said provision will not also be affected. If however, any more copies of the said booklet are now found, the question of taking action in respect thereof may be considered under the Press (Objectionable Matter) Act, 1951 when it comes into force.

Sd/-

Remembrancer of Legal Affairs.

U.P. to H.D. No. 2025-Confl. dated the 19th December 1951.

N.V.D.
29/6
4c.

Immediate.

No. 20707
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 28th
December 1951.

To
The District Magistrate,
Banaskantha, Palanpur.

Subject:- Indian Press (Emergency Powers)
Act, 1931 (XXIII of 1931).

Sir,

As regards the first question raised by the Senior Police Prosecutor in his letter accompanying your letter No. MAG/Misc, dated the 17th December 1951, on the subject noted above as to whether the words "Prints or otherwise Produces" which were inserted in section 18 of the Indian Press (Emergency Powers) Act, 1931 by Ordinance No. 52 of 1942 are still in force, I am directed to state that these words were inserted by Ordinance No. 52 of 1942 and the said Ordinance No was subsequently repealed by Ordinance No. 1 of 1946 (B.G.G. Part IV pages 11-16). Section 3 of Ordinance No.1 of 1946, however, provided that "nor shall the repeal by this Ordinance of any Ordinance by which the text of any law was amended by the express omission, insertion or substitution of any matter, affect the continuance of any such amendment in operation at the commencement of this Ordinance, unless a different intention was expressly stated in the Ordinance by which the amendment was made. There was no such express intention in the Ordinance by which section 18 was amended and therefore, it is obvious that the amendment effected by the Ordinance would continue to remain

operative even after the repeal. It may further be noted that any Ordinance issued by the Governor General during the period 27.6.1940 and 1.4.1946 is not subject to any time limit unless such limit is imposed by the Ordinance itself. (vide J.J. Gas Plant Manufacturing Co. (Rampur). [illegible] and others vs. King Emperor, 1947 F.C.R. 141 at pp. 161-162). The contention that the Ordinance had a life of 6 months only is not therefore correct.

As regards the second question whether the prosecution can be continued after repeal of the Act raised in the letter, I am to state that in the first place, the Indian Press (Emergency Powers) Act, 1931, is not yet repealed as the new Act namely the Press (Objectionable Matter) Act, 1951 has not so far come into force. It would come into force on 1.2.1952 and the Indian Press (Emergency Powers) Act, 1931, would be repealed on that day. The repeal, however, will not affect the liability already incurred or a prosecution which is already pending (vide sect. 6 of the General Clauses Act, 1897).

Yours faithfully,

sd/-

for Remembrancer of Legal Affairs.

M.V.D.
29/6
4c.